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No. 85-1477

In The Supreme Court Of The United States

OCTOBER TERM, 1985

JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY, and ANGELA LUCY, Individually,
Petitioners,

v.

AMOCO OIL COMPANY, a Maryland corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE TO CONCERNED LEADERS' MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

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Respondent Amoco Oil Company,[1] pursuant to Rule 42.4, files this Response to the Motion for Leave to File Brief *Amicus Curiae* submitted by the Concerned Leaders in Government, Education and Business ("Concerned Leaders"), and requests that said motion be denied.

[1] For the statement of corporate affiliation required by Rule 28.1, see Respondent's Brief In Opposition, p. 1, fn. 1.

The Concerned Leaders seek leave to urge this Court to review an issue which was neither decided by the court of appeals nor essential to its affirmance of the district court. The sole issue on which they would ask that certiorari be granted, i.e., whether the death of the named franchisee is a proper ground for *automatic* termination under the Petroleum Marketing Practices Act ("PMPA"), was one which, on the facts of this case, the court of appeals did not reach and did not have to reach to affirm the judgment of the district court.

The lease agreement between Amoco and Raymond Lucy expressly granted Amoco the right to terminate the franchise relationship in the event of:

> Death or other continuing severe physical or mental disability of Lessee of at least three months' duration. . . . Lease, ¶ 15(g). Petitioners' App. B, B-5.

Moreover, the lease agreement expressly provided that it could not be assigned or transferred, either by Raymond Lucy or by operation of law, such as upon his death, without the consent of Amoco. (Lease, ¶¶ 14(a), (b). Petitioners' App. B, B-5).

Based upon its interpretation of these provisions, and upon its interpretation of the PMPA, the court of appeals held that the termination of the franchise upon Raymond Lucy's death did not violate the PMPA. Contrary to the supposition of the Concerned Leaders, the court of appeals did not conclude that a franchise would be "automatically" terminated upon the death of the franchisee.

Also contrary to the supposition of the Concerned Leaders, this case is not an appropriate one in which to argue that termination of a franchise upon the death of the named franchisee is a practice which has a discriminatory impact upon women business persons in general or upon the wives of service station franchisees in particular. Petitioners' claim under the Michigan Civil Rights Act that Amoco discriminated against them on the basis of their sex by not renewing the franchise after their husband's and father's death was tried to a jury which found Amoco not liable. The court of appeals for the Sixth Circuit found no error in the trial and Petitioners did not request review of that finding by this Court.

Accordingly, the proposed brief *amicus curiae* of the Concerned Leaders would not be helpful to the Court in deciding whether certiorari should be granted. It would ask the Court to review an issue on which the judgment of the court of appeals does not depend and would advance in support of that request assumptions about facts which a jury found are not involved in this case. Leave to file the proposed brief *amicus curiae* should therefore be denied.

WHEREFORE, Amoco Oil Company respectfully requests that the motion of the Concerned Leaders in Government, Education and Business for leave to file brief *amicus curiae* be denied.

Respectfully submitted,

DYKEMA, GOSSETT, SPENCER,
GOODNOW & TRIGG

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Dated: April 18, 1986.